



0000094452

BEFORE THE ARIZONA CORPORATION

IN THE MATTER OF THE APPLICATION OF ) DOCKET NO.  
WILHOIT WATER COMPANY, INC., YAVAPAI ) W-02065A-08-0592  
MOBILE HOME ESTATES SYSTEM, FOR AN )  
EMERGENCY RATE INCREASE. )  
\_\_\_\_\_ ) STATUS CONFERENCE

At: Phoenix, Arizona  
Date: February 26, 2009  
Filed: **MAR 11 2009**

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1 BE IT REMEMBERED that the above-entitled and  
2 numbered matter came on regularly to be heard before the  
3 Arizona Corporation Commission, in Hearing Room 1 of  
4 said Commission, 1200 West Washington Street, Phoenix,  
5 Arizona, commencing at 10:32 a.m. on the 26th of  
6 February, 2009.

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BEFORE: MARC E. STERN, Administrative Law Judge

10 APPEARANCES:

11

For the Arizona Corporation Commission Staff:

12

13 Ms. Ayesha Vohra and Mr. Charles Hains  
14 Staff Attorneys, Legal Division  
1200 West Washington Street  
Phoenix, Arizona 85007

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For the Applicant:

16

17 MARTIN & BELL, LLC  
By Mr. Douglas G. Martin  
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18 Phoenix, Arizona 85004

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COLETTE E. ROSS  
Certified Reporter  
Certificate No. 50658

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1 ALJ STERN: We are on the record in the matter  
2 of the application of Wilhoit Water Company,  
3 Incorporated, Yavapai Mobile Home Estates System, for an  
4 emergency rate increase, Docket W-02065A-08-0592.

5 And at this time we will take appearances. And  
6 on behalf of the applicant, Wilhoit Water Company.

7 MR. MARTIN: Douglas Martin on behalf of Martin  
8 & Bell.

9 ALJ STERN: Thank you, Mr. Martin.  
10 And on behalf of the Commission's Utilities  
11 Division.

12 MS. VOHRA: Good morning, Your Honor. Ayesha  
13 Vohra on behalf of Staff, with Katrin Stukov, Pedro  
14 Chaves and Charles Hains.

15 ALJ STERN: All right. The reason we are here  
16 today, I guess, is an emergency rate case that was filed  
17 by the company. We put out a procedural order. We  
18 scheduled it for a hearing. The company subsequently  
19 wrote a letter in response to the procedural order which  
20 informed the Commission that apparently the company  
21 didn't provide public notice as ordered. Also there is  
22 an issue proposed by the City of Prescott.

23 This system, if I remember everything correctly,  
24 buys water from the City of Prescott, is that correct?

25 MR. MARTIN: Yes, Your Honor.

1 ALJ STERN: Mr. Martin has indicated yes.  
2 How long are they going to be able to buy it  
3 for?

4 MR. MARTIN: That's not clear, Your Honor.  
5 Right now there is a suggestion by the City of Prescott  
6 that March 31 is the deadline. Recent conversations  
7 with the city manager indicate there is softness in  
8 that. There are discussions between the City of  
9 Prescott and Chino Valley where Chino would like to take  
10 over the system, but there appear to be other political  
11 issues that prevent that.

12 If Chino purchased the system, it of course  
13 takes care of the need for the continued Prescott water.  
14 As of now, there is a need for the continued Prescott  
15 water and an uncertain date for how long it will be  
16 available but likely available past March 31.

17 ALJ STERN: And the system has excess arsenic,  
18 isn't that correct, the wells of the system?

19 MR. MARTIN: Yes.

20 ALJ STERN: And wasn't this system granted a  
21 rate increase back in June of last year?

22 MR. MARTIN: For an arsenic fix that was  
23 approved, if I understand correctly, by ADEQ and was  
24 installed and turned out not to be a fix at all at  
25 roughly 40,000 out of pocket.

1 ALJ STERN: And in the interim, the rates  
2 couldn't go into effect, is that correct?

3 MR. MARTIN: I believe that's accurate, Your  
4 Honor.

5 ALJ STERN: And the reason they didn't go in  
6 effect was because the company owes back taxes, isn't  
7 that correct?

8 MR. MARTIN: That's correct.

9 ALJ STERN: And the company has two other  
10 systems in a similar situation, if I recall correctly,  
11 the Thunderbird system and the Blue Hills No. 3?

12 MR. MARTIN: Also accurate.

13 ALJ STERN: What is happening with the back  
14 taxes?

15 MR. MARTIN: I don't believe there is a fixed  
16 deal. I believe there have been discussions with the  
17 Yavapai County treasurer and an understanding reached  
18 but unfunded yet by the company, unfunded in the sense  
19 the county agreeing to take back taxes, waiving  
20 penalties and interest and taking money on an  
21 installment basis. But there is yet to be a formal  
22 agreement between the treasurer and the owner to fund  
23 the back taxes.

24 ALJ STERN: And nothing formal in writing,  
25 though?

1 MR. MARTIN: Nothing that I am aware of, Your  
2 Honor.

3 ALJ STERN: Who owns this system now?

4 MR. MARTIN: I believe the Wilhoit Water Company  
5 is the entity that owns --

6 ALJ STERN: Who owns Wilhoit Water now?

7 MR. MARTIN: Best of my understanding, it is  
8 Glen Arm.

9 ALJ STERN: Glen Arm Land Company?

10 MR. MARTIN: Glen Arm Land Company.

11 ALJ STERN: That's a separate corporation?

12 MR. MARTIN: It is a separate entity, Your  
13 Honor, controlled by the estate of one brother and a  
14 second brother.

15 And by way of explaining, we have understood the  
16 acuteness of the tax issue and have pressed the owner as  
17 best we could to make the commitment. He is the 84-,  
18 85-year-old owner who has been down here recently  
19 because of pacemaker issues, does he need one or not,  
20 and health issues have gotten in the way.

21 ALJ STERN: What is Staff's position with this  
22 matter? Basically, I don't know what the situation is.  
23 Emergency rates, then we have a permanent rate case that  
24 we can't impose, the company can't impose the rates  
25 because the back taxes. Is Staff going to change its

1 position on this?

2 MS. VOHRA: I apologize, Your Honor. One  
3 moment.

4 ALJ STERN: Mr. Hains.

5 MR. HAINS: Thank you. Good morning.

6 I hadn't anticipated speaking here, but it is my  
7 understanding that between all these moving parts, you  
8 are correct that Staff shares your concerns about how  
9 the company can come into compliance with all of these  
10 issues and be able to move forward. At least in the  
11 interim they do need to be able to provide drinkable  
12 water to their customers. That's probably our primary  
13 concern, making sure they are able to do that on a  
14 continuing basis. And obviously that focuses a lot of  
15 attention on this issue with City of Prescott and the  
16 continuation of water services in light of the letter  
17 they provided.

18 It is my understanding that Staff's position is  
19 somewhat in agreement with what Mr. Martin has said,  
20 that perhaps the March 31 date is not necessarily in  
21 concrete. It is our understanding that City of  
22 Prescott's apprehension is about being in a position of  
23 permanently providing water to the company.

24 Our belief is to the effect, if there is a  
25 solution that's on the table, that that might alleviate

1 some of the concerns of City of Prescott, and so a  
2 solution to both -- a solution to the one is going to  
3 require a solution to the other one at the same time.

4           Staff does believe that the emergency rate case  
5 can go forward and probably should go forward because  
6 they do need to be able to pay for this water that they  
7 are purchasing. And it is my understanding they are not  
8 able to pay for it or they are losing money right now  
9 paying for it presently.

10           With relation to dealing with the arsenic issue  
11 and the permanent solution that is most likely to be  
12 able to obtain some sort of comfort for City of Prescott  
13 that they won't be permanently in the saddle for  
14 providing water to the company, Staff suggested to the  
15 company a couple of alternatives.

16           The first one would be perhaps them filing  
17 something to the effect of a 40-252 to amend the prior  
18 rate decision. As you may recall, it did approve an  
19 ACRM in there. Staff has discussed with them the  
20 possibility of modifying that decision to permit for an  
21 arsenic recovery surcharge mechanism that would provide  
22 for the ability to deal with the arsenic issue in a  
23 prospective basis rather than paying for the amounts  
24 they have paid already for the solution that was no  
25 solution at all.

1           ALJ STERN: The only thing I see from the City  
2 of Prescott is that they are turning off the water  
3 effective March 31st. And if nobody has anything in  
4 writing -- somebody can say, well, it is a soft turnoff  
5 or whatever, but no one has anything in writing, nobody  
6 knows for sure what is going on.

7           Have you talked to the City of Prescott or any  
8 engineers or anything? Mr. Hains, you can answer. I  
9 mean I don't know what the status of this is. Someone,  
10 I think, from Staff has to talk to the city to see if  
11 the city is going to turn it off, not going to turn it  
12 off, maybe give them water until the situation is  
13 resolved with Chino Valley. Seems somebody has to get  
14 off of dead center.

15           MR. HAINS: Certainly. I was asking -- I am not  
16 actually formally assigned to the cases. I have been  
17 trying to help out asking for clarification here.

18           It is my understanding Staff has not personally  
19 communicated with any representatives from City of  
20 Prescott with regard to this issue. One of the issues  
21 is trying to make sure that the company does stay on top  
22 of this issue and does maintain communications with the  
23 entities. And we have been trying to, through ongoing  
24 communications with the company, trying to get status  
25 updates on the nature of examinations both on resolving

1 the tax issues with Yavapai and --

2 ALJ STERN: Well, the one thing, even if we just  
3 take a look at what transpired back last June, the  
4 Commission, in Decision No. 70384, approved an increase  
5 for the company in the form of an increase in their  
6 gallonage charges, also approved an arsenic surcharge.  
7 Did they approve an arsenic surcharge recovery  
8 mechanism? Is that what is approved?

9 MR. HAINS: I apologize, Your Honor, I didn't  
10 catch all of that.

11 ALJ STERN: Did the Commission approve -- I am  
12 just looking real quickly if we approved an arsenic cost  
13 recovery mechanism at that time. Because, if the  
14 company is contemplating coming in for a possible  
15 amendment of that decision, that would be an instant  
16 remedy to get them an increase in rates, assuming the  
17 Commission has a mind to amend that prior decision, and  
18 you would have a way to get funding for the arsenic  
19 treatment facilities possibly if that's what the  
20 decision authorized.

21 I am just trying to go through and take a look.  
22 And I don't know whether or not it will solve all the  
23 problems but that's possibly an easier way than having  
24 an emergency rate increase, because I am not sure an  
25 emergency rate increase is going to fly any further than

1 this rate increase did since there is no resolution to  
2 the back tax issue.

3 MR. HAINS: Before answering that I do have a  
4 response about the City of Prescott. I am informed that  
5 Mr. Olea has spoken with the city manager at City of  
6 Prescott and that he has been told that they do not  
7 intend to cut the water off, provided that there are  
8 some significant steps taken by the company to indicate  
9 that they are moving forward.

10 If you would allow me just a moment to confer  
11 with Staff here in response to your second question,  
12 though.

13 ALJ STERN: Okay. Yes, sir.

14 MR. HAINS: Your Honor, you are right that there  
15 is a potential for some amount of the issues to be  
16 resolved by simply reopening the prior rate case for the  
17 purpose of amending it to deal with some of these issues  
18 related to the arsenic. However, the issue with the  
19 purchase of the replacement water from Prescott, that's  
20 an ongoing thing and is on an emergency basis. I don't  
21 know that it would be appropriate to deal with that  
22 within the context of what was developed for that rate  
23 case.

24 ALJ STERN: Well, how much per thousand gallons  
25 does the company pay the city, do you know?

1 MR. MARTIN: Your Honor.

2 ALJ STERN: Yes. About how much?

3 MR. MARTIN: \$4.20.

4 ALJ STERN: Per thousand gallons?

5 Okay. Mr. Hains, Mr. Martin indicates it is  
6 \$4.20 per thousand. Perhaps the permanent rates ordered  
7 in that decision don't resolve the situation. Are we  
8 going to get anything in writing from the city that they  
9 will continue to provide water to the company?

10 MR. HAINS: I am sure Staff will try and work  
11 with the company as well to endeavor to get the city to  
12 commit on that respect. But I don't have any  
13 information that they are prepared to write, put  
14 anything in writing at the moment aside from what they  
15 already have put in writing.

16 ALJ STERN: Okay. Well, then the other issue is  
17 is Staff going to recommend an emergency rate increase  
18 in light of the Commission's previous order that no  
19 rates be imposed until the back tax situation is  
20 resolved, or hasn't that decision been made yet?

21 MR. HAINS: Your Honor, it was my understanding  
22 Staff was going to recommend that there would be an  
23 emergency rate increase at least for the purposes of  
24 dealing with the purchased water cost from City of  
25 Prescott.

1 ALJ STERN: Okay. Would the ACRM that's  
2 authorized in the decision from last year be able to  
3 address the cost of installing arsenic equipment if the  
4 Commission would amend that decision to allow for the  
5 collection of those rates?

6 And for the AC -- well, the ACRM is already  
7 authorized in the decision. It is the rates that have  
8 to be authorized. The Commission has to essentially  
9 remove the backs tax issue.

10 MR. HAINS: There is that, Your Honor, you are  
11 correct. But also, to the extent that the ACRM that was  
12 approved dealt with equipment that was testified to that  
13 was put in place and actually did not end up being  
14 sufficient, there is going to have to be more testimony  
15 to develop what is going to be, the company is going to  
16 be putting in that will ultimately be in the permanent  
17 solution to the arsenic issue.

18 ALJ STERN: All right. Is there a financing  
19 application pending for the new equipment then?

20 MR. MARTIN: Your Honor, I defer to Mr. West.  
21 It is my understanding yes, there is application in  
22 place with the same kind of loopy-goopy tentative  
23 approval subject to rate increases.

24 And is it WIFA, is that the right acronym?

25 ALJ STERN: So the new financing would be for

1 much more expense than the \$40,000 originally described  
2 in the other case?

3 MR. MARTIN: For me to characterize it as  
4 anything other than outrageous would be not giving good  
5 weight. \$380,000 as a starting point without reference  
6 to cost overruns, which are inevitable, and maintenance  
7 costs.

8 ALJ STERN: Could you speak into the microphone  
9 because otherwise nobody will hear you anywhere.

10 MR. MARTIN: Oh, that's not true, Your Honor.  
11 They will hear me.

12 We think it is roughly 100 users so roughly a  
13 cost of \$3,800 per user as a starter with other issues  
14 yet to be looked at, all emphasizing to me the necessity  
15 of trying to get an intergovernmental agreement between  
16 Prescott and Chino to solve this problem long term so  
17 that these users have arsenic relatively free water.

18 At this stage, it is, it is difficult to  
19 contemplate the final solution in a short term. It is  
20 going to take awhile to get the financing in place and  
21 get the replacement system in place. Likely, Prescott  
22 will hang still for that. The interim issue that I see  
23 right now is can we get the emergency rate increase  
24 subject to the same conditions that you suggested  
25 before, which is we must deal with the back tax issue.

1 So I am hopeful of just accomplishing one thing today,  
2 which is authorizing the emergency rate increase for the  
3 Prescott water cost, if that's possible.

4 ALJ STERN: You can't do it without public  
5 notice. And there hasn't been any public notice. The  
6 company didn't do that back in, whenever we ordered, the  
7 company didn't do it, must have been December or  
8 January possibly.

9 On December 29th, we put out a procedural order  
10 and scheduled a hearing for today, I think. And the  
11 problem was at that time public notice wasn't provided.  
12 Then there was also, again, the issue that we have this  
13 back tax problem, which, again, I don't know what is  
14 going to happen with that even after we have a hearing  
15 and there is a recommended order, even assuming that the  
16 recommended order recommends the emergency rates to  
17 address this water situation.

18 All right. The only thing we can do is if there  
19 is a pending -- and I think I saw a file for the  
20 financing. I am not sure it exactly spells out what is  
21 going to be transacted.

22 How long -- has Staff taken a look at the filing  
23 for the financing that Mr. West referred to?

24 MR. HAINS: I think Staff, Your Honor, Staff's  
25 position on it is the financing has to do with the

1 installation of the arsenic materials and that Staff  
2 looked at it as being something that could have been  
3 dealt with through a modification of the arsenic  
4 recovery mechanism that was approved inside of the prior  
5 rate case as opposed to having to proceed forward with  
6 the financing application. I apologize, I don't have  
7 any personal information on it. I am not the attorney  
8 assigned to that --

9 ALJ STERN: Okay.

10 MR. HAINS: -- docket either, so...

11 ALJ STERN: I tell you what here, I can schedule  
12 an emergency rate case. I don't know what you are going  
13 to do about the financing. We have to -- what has to be  
14 done is, and I think the citizens up in the area of this  
15 system, although they will be delighted to continue to  
16 receive water, they are probably not going to be excited  
17 about the fact all of a sudden they are going to be  
18 paying -- I don't know what the rates are going to be.  
19 If it is \$4.20 per thousand, we still are going to have  
20 the regular water bill on top of that. Whatever the  
21 rates are from that haven't been able to be -- the  
22 decision in June or July, let me say that, those haven't  
23 been imposed but there are existing rates up there so  
24 that \$4.20 per thousand is going to be tagged onto the  
25 existing rates, whatever they are.

1 MR. HAINS: That's correct.

2 ALJ STERN: So people are going to be somewhat  
3 surprised if and when this happens. And they have to  
4 get public notice of it. They have to have an  
5 opportunity if they want to intervene or whatever.

6 So we will go through the motions. And in the  
7 meantime I hope somebody gets something from the city  
8 that says they will stand by their obligation -- they  
9 may not look at it as an obligation -- and continue to  
10 supply water if the company has the money or continues  
11 to pay for it.

12 In any event, you all will have to decide what  
13 you want to do with the financing application. I know  
14 there is one, but if it can be addressed in terms of the  
15 amendment of the prior decision, assuming of course that  
16 that will happen, we will see where we go. Because this  
17 case is very, very problematic to say the least.

18 I want to take just a brief recess and then we  
19 will come back and see what we can do to move this  
20 along.

21 (A recess ensued from 10:53 a.m. to 11:03 a.m.)

22 ALJ STERN: Okay. We are back on the record.

23 Here is where I think we are going to go with  
24 this. In one week, I will give you to next Friday I  
25 think to make a filing, Mr. Martin. I want to know if,

1 in that filing, and if you can get something in writing  
2 and/or Staff, if you can get something in writing  
3 assuring the Commission that water will continue to flow  
4 to the customers. And, number, two, I would like to  
5 know in writing what the exact status of the  
6 negotiations with the county are on the back taxes,  
7 because this has been sitting here since last year and  
8 nothing has been done and there are a couple other  
9 systems involved also. So we want to know about that  
10 particularly.

11 The company, I guess, the present rates that the  
12 company is receiving go back to '92. But that's no  
13 fault of the Commission. And that's one of the problems  
14 that appears to be existing for this company. I guess  
15 its management is at the point where they are more  
16 concerned, you know, with their health than with the  
17 running of the water utility. And I want Staff to take  
18 a good look at this and examine why nothing has been  
19 done.

20 The question of an interim operator, an OSC  
21 might be the best way to go in a situation like this,  
22 because you have three systems separated. They are not  
23 all together. And I know the Thunderbird Meadows system  
24 is essentially in a similar situation, not so much with  
25 getting water from the City of Prescott but it has got a

1 back tax problem. The Blue Hills No. 3 system has a  
2 back tax problem. And I would like to see something in  
3 writing that says exactly what the status of the back  
4 tax problem is because I don't know what I am going to  
5 do if Staff goes through and says we will recommend  
6 emergency rates for the company at least to pay for the  
7 water and don't worry about the back taxes. And I don't  
8 know what the Commission is going to do. So I am  
9 concerned about the management of the company, because I  
10 think it has gone downhill ever since, for the last  
11 couple years. And the issue of the back taxes haven't  
12 been addressed.

13 And also the situation, I guess I am going to  
14 ask you again, Mr. Martin, the company apparently went  
15 ahead and invested some money in an arsenic system that  
16 didn't work, are they doing anything to recover those  
17 funds?

18 MR. MARTIN: Your Honor, I am not sure I  
19 understand the question. Recover from who?

20 ALJ STERN: The parties that they paid \$40,000  
21 to.

22 MR. MARTIN: That was the infamous suicide in  
23 the paper. Maybe Mr. West can share other details. But  
24 the operator who installed the system committed suicide,  
25 if my memory is correct, shortly after the installation.

1 The entity doesn't appear to have assets. It is not  
2 collectable. There is no one around willing to provide  
3 service.

4 ALJ STERN: That's too bad. Well, in any event,  
5 I guess we have to go with a new system anyhow. But  
6 whatever the situation is, if Staff's suggestion of  
7 possibly amending the other decision with regards to the  
8 arsenic recovery system, you are still stuck with a 100  
9 customer water company with very little options. And  
10 the Commission I am not sure wants to act on this until  
11 we see something in writing, until we know what is  
12 happening, what Staff's feelings are with respect to the  
13 management on an ongoing basis, whether an interim  
14 manager might work out better.

15 And, secondly, once you give the company  
16 emergency rates for this system, there is no real  
17 incentive to do anything because they are going to be  
18 able to buy water from the City of Prescott so long as  
19 the city continues to provide them water. So let's give  
20 this some thought.

21 So what I am going to do, I am not going to  
22 schedule this for an emergency rate hearing yet. I want  
23 to see by next Friday a filing from the company and  
24 Staff what their respective positions are. And like I  
25 say, I would like to see something that clarifies what

1 the city's position is on this water provision to the  
2 company. And then we will take a look at it. And if  
3 needed, we will have another prehearing conference or  
4 status conference. And if not, I might be able to  
5 schedule it for a hearing.

6 So with that, we will recess now unless anybody  
7 has any questions.

8 MR. MARTIN: No. Thank you, Your Honor.

9 ALJ STERN: Mr. Hains.

10 MR. HAINS: Yes, Your Honor, thank you. Just  
11 one question. When you indicated the Staff filing as  
12 well, were you contemplating a joint filing or something  
13 separate?

14 ALJ STERN: Separate.

15 MR. HAINS: Thank you.

16 ALJ STERN: I want Staff to take a look what has  
17 been going on with the three systems run by this company  
18 that is owned by a land company that is owned by an  
19 84-year-old man that has heart problems and the estate  
20 of his brother that has been hanging around for a couple  
21 years, too. And I don't know if this is going to be  
22 another Sabrosa or what is going on but the Commission  
23 has concerns when the companies get to this point in  
24 time and you have customers out there expecting water to  
25 be flowing from their taps.

1 All right. If there is -- any other questions?

2 (No response.)

3 ALJ STERN: Okay. With that, we will go into  
4 recess. And I will wait for your filings by next -- you  
5 can file before next Friday if you have everything  
6 ready.

7 MR. MARTIN: Thank you.

8 MR. HAINS: Thank you.

9 (The proceeding concluded at 11:08 a.m.)

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1 STATE OF ARIZONA )  
2 ) ss.  
3 COUNTY OF MARICOPA )  
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7 I, COLETTE E. ROSS, Certified Reporter No.  
8 50658 for the State of Arizona, do hereby certify that  
9 the foregoing printed pages constitute a full, true and  
10 accurate transcript of the proceedings had in the  
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